IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Central Excise Appeal No.29/2006
The Commissioner of Central Excise, Nagpur
Vs.
M/s. Oriental Explosives (P) Ltd., and another.

Mr. F.T. Mirza, Advocate for the appellant.
Mr. M.G. Bhangde, Senior Advocate with Advocate V. V. Bhangde for the respondent no.1.

.....

Central Excise Appeal No.22/2006

The Commissioner of Central Excise, Nagpur
Vs.
M/s. Oriental Explosives (P) Ltd., and another.

Mr. F.T. Mirza, Advocate for the appellant.
Mr. M.G. Bhangde, Senior Advocate with Advocate V. V. Bhangde for the respondent nos.1 and 4.
Mr. Samarth, Advocate for respondent no. 2.
Mr. Rohit Deo, Advocate for respondent no.3.

.....

Central Excise Appeal No.20/2007

The Commissioner of Central Excise, Nagpur
Vs.
M/s. Maimoon Enterprises & Consultants,Nagpur and another

Mr. F.T. Mirza, Advocate for the appellant.

.....

Central Excise Appeal No.43/2006

The Commissioner of Central Excise, Nagpur
Vs.
M/s. Solar Capitals Ltd. and another

Mr. F.T. Mirza, Advocate for the appellant.
Mr. M.V. Samarth, Advocate for respondent no.1.

.....

Central Excise Appeal No.3/2007

Commissioner of Central Excise, Nagpur
Vs.
M/s. Keltech Energies Ltd. and another

Mr. F.T. Mirza, Advocate for the appellant.
Mr. M.G. Bhangde, Senior Advocate with Advocate V.V. Bhangde for respondent no.1.

.....

Central Excise Appeal No.21/2007

Commissioner of Central Excise, Nagpur
Vs.
M/s. Keltech Energies Ltd. and another

Mr. F.T. Mirza, Advocate for the appellant.
Mr. M.G. Bhangde, Senior Advocate with Advocate V.V. Bhangde for respondent no.1.

.....

Central Excise Appeal No.14/2007

Commissioner of Central Excise, Nagpur

Vs.
M/s. Keltech Energies Ltd. and another

Mr. F.T. Mirza, Advocate for the appellant.
Mr. M.G. Bhangde, Advocate with Advocate V.V. Bhangde for respondent no. 1.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : **A.P. LAVANDE AND**
R. V. MORE, JJ.
DATED : 31/08/2007.

1. Heard learned counsel for the parties.

2. All these appeals are being disposed of by common order since they involve common question of law and the facts are almost identical.

3. These appeals have been preferred by Revenue challenging the orders passed by Central Excise and Service Tax (Appellate Tribunal) West Regional Bench at Mumbai (CESTAT “for short”) dismissing the appeals filed by the revenue against the orders passed by the Commissioner of Central Excise (Appeals) Nagpur by which the appeals filed against orders passed by the Assistant Commissioner, Nagpur in favour of respondent no.1 in all these appeals were dismissed.

4. Respondent no.1 in all these appeals entered into different agreements with M/s. Coal India Limited for supply of Explosives for the period 1.4.2000 to 31.3.2001. The price of explosives was fixed by an agreement entered into between the parties. Initially, price of explosives to be supplied beginning from 1.4.2001 onwards was not fixed and as such at the higher rates prevailing during the year 2000-2001, Respondent no.1 cleared the goods. Thereafter respondent no.1 entered into agreements with M/s. Coal India Ltd. by which the rates were reduced. Respondent no.1, therefore, issued credit notes to M/s. Coal India Ltd. towards excess amount for the period of supply beginning from 1.4.2001. Respondent no.1 in each appeal filed application for refund which was allowed by the Assistant Commissioner. The Assistant Commissioner found that the refund claim was submitted within the prescribed period i.e. within the period of one year and and assessee had issued credit notes to the tune of differential value inclusive of Central Excise Duty. This order was challenged before the Commissioner (Excise) who dismissed the appeals, inter alia, on the ground that duty had been passed to the purchaser and later on paid through credit

notes. CESTAT dismissed the appeals preferred against the order passed by Commissioner.

5. Mr. Mirza, learned counsel for revenue submitted that subsequent reduction in the price is not a ground for refund of a duty inasmuch as the assessment was not provisional. According to Mr. Mirza, subsequent agreement entered into between respondent no.1 and Coal India Limited reducing the price is totally irrelevant and as such cannot be a ground for claiming refund. In support of his submissions, Mr. Mirza placed reliance upon the following decisions:-

1. 1997 (92) E.L.T. 309 (S.C.) MRF Ltd. Vs. Collector of Central Excise, Madras;

2. 2007 (207) E.L.T. 31 (P & H) Mauria Udyog Ltd. v Commissioner of Central Excise; and

3. 2002 (146) E.L.T. 241 (S.C.) Metal Forgings v Union of India.

6. Per contra, Mr. Bhangde, learned Senior Counsel who argued on behalf of assessees submitted that no substantial question of law is involved in the present appeals and,therefore, the appeals deserves to be dismissed in limine. He further submitted that the judgments relied upon by Mr. Mirza, learned counsel on behalf of the revenue

are clearly not attracted since the facts in the said judgments are clearly distinguishable. He further submitted that in all the appeals although there was no provisional assessment, the assessee paid duties at higher rates on the basis of tentative price in terms of the agreement which was applicable for the period 1.4.2000 to 31.3.2001 and pursuant to subsequent agreement entered between assessee and M/s. Coal India Ltd., the price for the period beginning from 1st April 2000 was reduced. Hence, ratio laid down in the case of Metal Forgings (supra) is not attracted. He further submitted that the department has not disputed that there was an agreement entered into after 1.4.2001 fixing the price for the supply of explosives for the period beginning from 1.4.2001 and that the assessee had issued credit notes in respect of excess duties paid by the assessees. He further submitted that since transaction between the assessee and M/s. Coal India Ltd. was transparent and there was no unjust enrichment, the impugned orders cannot be faulted. In support of his submissions, Mr. Bangde relied upon the following judgments:-

1. 2003 (154) E.L.T. 237 (Telephone Cables Ltd v Commissioner of C.Ex.,Chandigarh).

2. 2004 (175) E.L.T. 202 (Commissioner of Central Excise, Jaipur Vs. Universal Cylinders Ltd.

Mr. Bhangde has also placed reliance upon order dated 9.8.2004 by which Special Leave Petition filed by the Department against the judgment in the case of Universal Cylinders Ltd. (supra) has been dismissed.

7. We have carefully considered the submissions made by learned counsel for the parties and perused the judgments relied upon by them.

8. In the case of Universal Cylinders Ltd.(supra) relied upon by Mr. Bangde, the Tribunal dismissed the appeals filed by the revenue. In the said case the respondents i.e. Universal Cylinders Ltd. who were manufactures of LPG cylinders had supplied 24650 cylinders to Hindustan Petroleum Corporation at the provisional price in the purchase order and paid duties at 16%. The said price was reduced from Rs. 637.17 per cylinder to Rs.476.62 by the HPC vide their letter dated 10.8.2001 and they adjusted the excess price including the duty from the subsequent supplies made by the respondents.

In this fact situation, the Tribunal held that there was no question of unjust enrichment and up-held the order passed by the Commissioner granting refund

thereby reversing the order passed by adjudicating authority . The Apex Court by order dated 4.4.2004 dismissed the Special Leave Petition up-holding the order passed by the Tribunal. In the case of Telephone Cables Ltd.(supra) the High Court set aside the order passed by the Tribunal denying refund to the assessee on the ground that assessee had not sought provisional assessment. In the said case there was an agreement between the appellant and DOT in which there was stipulation for price variation on account of copper as per standard price variation table in terms of initial tender. The assessee had paid excise duty on higher amounts than what was received by them as price of cable from DOT. The department refused to refund excise duty on the ground that price was reduced after clearance of the goods and as such the assessee was not entitled for refund of duty for reduced price. In the said judgment it has been held that since clearance was not against fixed price and price was subject to fluctuation the assessee was entitled to refund.

9. In the case of MRF Ltd. (supra) the Apex Court has held that once the assessee clears the goods on the classification and price indicated by him

at the time of the removal of the goods from the factory gate, the assessee becomes liable to payment of duty on that date and time and subsequent reduction in prices cannot be a matter of concern to the Central Excise Department. In the said case, the price of goods was approved on 14.5.1983 but subsequent thereto on account of consumer resistance Government directed to roll back the prices to pre 14.5.1983 level and it is on account of this roll back prices that there came about a differential in the price on the basis of which the assessee claimed refund of excise duty to that extent. The facts in this case are clearly distinguishable from the facts in the above appeals and, therefore, in our considered opinion the ratio laid down in the case of MRF Ltd. does not advance the case of the revenue.

10. In the case of Metal Forgings (supra) the Apex Court set aside the order of the Tribunal which had granted refund on the ground that the goods were cleared on provisional basis which was factually incorrect. The Apex Court held that there was no material to establish the fact that either there was a provisional classification or there was an order made under Rule 9B of the Rules. The ratio laid

down in this case does not advance the case of the revenue.

11. In the case of Mauria Udyog Ltd.(supra) relied upon by revenue the Apex Court held that when clearance of goods are not on provisional basis, any reduction of price at a later date could not be made foundation for seeking refund. In the said case, the application for refund was made on the ground that price was reduced by Oil Company to whom cylinders were supplied by the assessee. In this factual back ground, the Apex Court relying upon the ratio laid down by the Apex Court in the case of MRF Ltd. held that subsequent reduction in price would not entitle the assessee to claim refund. It is thus clear that the facts in the said case are not similar to the facts in the above appeals. Therefore, the ratio laid down in this case also does not advance the case of the revenue.

12. Having carefully considered the submissions made by learned counsel and having perused the judgments relied upon by the revenue and assessee, we are of the considered opinion that the ratio laid down in two judgments relied upon by the assessees which have been referred to above is clearly attracted in the cases before us. It is not disputed

by the revenue that at the time of payment of excise duty the assessees had made it clear to the Department that they were paying the excise duty on the basis of the provisional price applicable for the period 1.4.2000 to 31.3.2001 and the price was not fixed. Although the assessment was not provisional, that by itself, could not dis-entitle the assessees from claiming refund. Section 11-B of the Central Excise Act, 1944 also provides for refund of duty in any other case. Moreover, the fact that the price of the goods supplied by the assessees to M/s Coal India Limited was fixed by valid agreement entered into between the assessees and M/s Coal India Limited after 31.3.20001 has not been disputed by the revenue.

13. In this view of the matter, in our considered opinion, the impugned orders passed by all three authorities under Central Excise Act cannot be said to be illegal or contrary to law. In our opinion, the impugned orders have been passed following correct legal principles governing refund of duty. In our opinion, no substantial question of law is involved in all these appeals as required under Section 35-G(1) of the Central Excise Act, 1944.

14. For the reasons aforesaid, we find no merit

in any of the appeals. Hence, the appeals are dismissed.

JUDGE **JUDGE**

MLA.